these three months is at best inconsistent and frequently fails to meet the relevant TPUC benchmark. SWBT's performance for CHCs is also inadequate in many areas. As a result, SWBT does not provide nondiscriminatory access to unbundled loops.

Outages. The Commission need look no further than SWBT's FDT outage performance to conclude that SWBT's hot cut performance does not pass muster. SWBT has consistently reported double-digit outage figures for FDT conversions (12.9% in Dec. 1999, 17.6% in Jan. 2000, and 15.7% in Feb. 2000) far in excess of the five percent standard in the New York Order. See New York Order ¶ 302. Outage rates such as those reported by SWBT are particularly damaging to a CLEC, because outages suggest to end users that the CLEC's service is not reliable. Simply put, even timely cutovers are of little use to CLECs if the service is later plagued by unexpected outages or is otherwise of substandard quality.

SWBT attempts to justify this poor performance by pointing to processing errors and a software installation problem that are entirely within its control. See Supp. Letter at 10; see also Conway/Dysart Supp. Aff. ¶¶ 29-35. For the Commission to allow SWBT to excuse performance failures simply by pointing to "software glitches" or other processing errors that are within its control would render any performance standard meaningless.[42] This would be particularly unfortunate considering that SWBT's performance failures for hot cuts apparently do not

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[42] See In re Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, File No. EB-00IH-0085, Order, 2000 FCC LEXIS 1240 (rel. March 9, 2000) (FCC 00-92) (entering into a consent decree with Bell Atlantic requiring it to make a voluntary payment to the U.S. Treasury and to implement new performance measurements due to processing failures of UNE-P orders). According to the Consent Decree, Bell Atlantic "implemented hardware and software changes, and instituted revised manual and electronic procedures, designed to improve performance in processing orders and timely sending required status notifiers." Consent Decree at ¶ 8.

adversely affect SWBT's own retail services and, thereby provide SWBT with a competitive advantage making meaningful competition difficult to achieve.

SWBT also attempts to misdirect the Commission's attention from this substantial performance failure by claiming that if CLECs do not like the service quality for FDT, they can simply use CHC. See Supp. Letter at 10. As stated above, any such suggestion is directly contrary to the fact that FDT is an increasingly important tool for CLECs, as well as the fact that SWBT encourages CLECs to use FDT for orders involving fewer than 20 lines. Given the average of three to four lines per CLEC order for SWBT, it appears that most orders are likely to be good candidates for FDT. In sum, because SWBT's FDT hot cuts do not provide a meaningful opportunity to compete, then SWBT should not be found in compliance with this checklist item.

While Sprint has focused in this discussion on FDT hot cuts, SWBT's CHC outage performance is also cause for concern. CHC outages have gone from 1.6% in December 1999 to zero percent in January 2000 to 6.6% in February 2000 (2.7% even if the "software glitch" is allowed to discount SWBT's poor performance). The essence of providing a meaningful opportunity to competitors is providing that opportunity on a consistent basis. And, this SWBT has failed to do.

Trouble Reports. SWBT's trouble report performance is also discriminatory. PM 59 measures the percentage of cutovers that result in trouble reports within 30 days. As discussed above, the benchmark used in the New York Order was two percent; the TPUC benchmark is likewise two percent. Previously this information has been tracked by loop type (8db, 5db and BRI). In the Supp. Letter SWBT reports this data not by loop type, but broken down into CHC

and FDT.[43] To provide a better comparison to Bell Atlantic (Bell Atlantic tracked trouble reports within seven days), SWBT reported its CHC-FDT breakdown based on the number of trouble reports received within 10 days. SWBT's performance has never met the benchmark for FDT cutovers (2.88% in Dec. 1999, 2.01% in Jan. 2000, and 3.28% in Feb. 2000), while CHC cutovers met the benchmark in January and February 2000 but not in December 1999. See Conway/Dysart Supp. Aff. ¶ 20; see also SWBT March 21 Letter at 2. Also, loops provisioned via FDT increased from 1,293 in January 2000 to 2,258 in February 2000, suggesting that SWBT's FDT process may not be sufficiently scalable. This performance meets neither the TPUC benchmark nor the benchmark used in the New York Order, and it is certainly not consistent with providing CLECs a meaningful opportunity to compete.

Timeliness. SWBT again attempts to divert the Commission's attention in its discussion of hot cut timeliness. While SWBT attempts to focus the Commission's attention on its cutover interval performance (notwithstanding that this performance does not carry the burden placed on it), SWBT's premature disconnect and delayed cutover performance show that SWBT's hot cuts are not timely.

PM 114, a performance measure that is not discussed in the Supp. Letter, reports the percentage of premature disconnects for provisioning of unbundled loops with local number

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[43] Sprint notes that while SWBT does not rely on the 8db, 5db, and BRI loop breakdown in the Supp. Letter, SWBT has submitted updated data for these measures (PM 59-(01-03)). See SWBT March 23 Letter, Texas Aggregated Performance Measures at 6. According to this data, SWBT has suffered statistically significant failures to meet parity for all loop types for all three months (Dec. 1999-Feb. 2000) with the exception of 5db loops in February 2000. Even there, CLECs suffered trouble reports 2.9% of the time compared to two percent for SWBT. This demonstrates that the loop provisioning problems set forth in Sprint's Petition persist.

portability ("LNP"). There is no retail analog for this PM, so performance is measured against a benchmark set by the TPUC. The TPUC requires that SWBT perform hot cuts with fewer than two percent of those cutovers experiencing a premature disconnect within 10 minutes of the scheduled start time. SWBT failed to meet the two percent benchmark for CHC cuts for both January (3.9%) and February 2000 (11.2%). SWBT's FDT performance was also substandard in February (4.2%). See Conway/Dysart Supp. Aff. ¶ 9.

SWBT attempts to explain its poor February performance for both FDT and CHC by claiming that an error in newly installed software caused the February premature cuts to be in excess of the benchmark. Id. ¶ 10. For the reasons discussed above with regard to SWBT's outage performance, the Commission should not allow SWBT to excuse performance failures simply by pointing to "software failures" that are within its control.

In any event, SWBT has no explanation for its CHC performance in January, which at 3.9%, is nearly double the TPUC benchmark for premature disconnects. This highlights yet another concern with SWBT's hot cut performance: it is woefully inconsistent. For CHC, SWBT missed the benchmark two out of three months from December 1999 through February 2000, and SWBT missed the benchmark in the most recent month (February) for FDT cutovers. This performance simply does not demonstrate compliance, nor does it provide CLECs a meaningful opportunity to compete.

PM 115 -- the percentage of SWBT caused delayed cutovers for unbundled loops with LNP -- is another example of SWBT's lack of consistency. As with PM 114, SWBT fails to address this PM in the Supp. Letter. For PM 115, the TPUC requires that no more than eight percent of cutovers be delayed more than 30 minutes, no more than two percent of cutovers be

delayed more than one hour, and no more than one percent of cutovers be delayed more than two hours. SWBT never once met the one-hour or two-hour benchmarks for delayed FDT conversions for December 1999 and January 2000.[44] Conway/Dysart Supp. Aff. ¶ 9.

In sum, SWBT CHC cutovers are likely to be premature in excess of the benchmark, and FDT cutovers are even more likely to be delayed in excess of the benchmark. Thus, even if the cutover interval were within the benchmark (which it is not), there is a substantial question as to whether the cutover would have been premature or delayed at the start, possibly resulting in an outage or other disruption in service. For the reasons discussed above with respect to outages, a cutover that is performed within the interval but nonetheless results in an outage due to starting late or too soon causes the CLEC to suffer a critical loss of customer trust at a time when the quality of the CLEC's service is under intense scrutiny.

Against this rather poor performance record for delayed and premature cutovers, SWBT urges upon the Commission that its cutover interval performance measure (PM-114.01) meets or exceeds the Bell Atlantic benchmark. This argument is unavailing for several reasons. First, as pointed out by the DOJ in its March 20 ex parte, the data submitted by SWBT for PM 114.01 measure timeliness by the number of loops provisioned in a timely manner, not the number of orders provisioned in a timely manner. See DOJ March 20 Letter at 9. This likely overstates SWBT's performance in light of the fact (discussed above) that each hot cut order requests cutovers for three to four loops on average. And, if CHC orders typically include 20 or more

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[44] SWBT also missed the one-hour benchmark for delayed cutovers for CHC in December 1999. Conway/Dysart Supp. Aff. ¶ 9.

lines (as apparently desired by SWBT), SWBT's practice of reporting data based on lines could significantly skew the result for CHC cutovers.

SWBT argues that counting loops is better than counting orders because CLECs have the option of rejecting and rescheduling orders that cannot be completed within the scheduled time frame, which would count all of the loops in the order as missing the timing benchmark. However, SWBT does not state how many CLECs actually avail themselves of this option. The failure to complete the order as scheduled will be disruptive for the CLEC and its end-user customer, but rescheduling the entire cutover process may be no less disruptive and injurious to the CLEC. In this circumstance, SWBT gets credit for most of the lines being completed notwithstanding the harm imposed upon the CLEC and its customer. In any event, SWBT's recalcitrant refusal to provide data based on orders suggests that the result would not demonstrate compliance.

Second, the Commission reached its timeliness conclusion in the New York Order based upon Bell Atlantic's ability to complete 90% of cutover orders for up to nine lines per order within one hour. See New York Order ¶ 292, ¶ 298. Here, the TPUC has established (as an interim measure) PM 114.01 to measure SWBT's ability to complete cutovers for orders of up to 24 lines within two hours 100% of the time. Conway/Dysart Supp. Aff. ¶ 15. SWBT clearly falls far short of the TPUC interim 100% standard, and its PM 114.01 is simply not comparable to the performance measure used in New York. SWBT has two hours to complete the work, as opposed to one hour for Bell Atlantic, and SWBT provides no data that would allow one to assess the extent to which it is being required to cutover orders for more than nine lines as part of this measure. In other words, the Commission cannot be certain today whether most of SWBT's

orders include fewer than 10 lines (although we have evidence that on average orders request cutover for three to four lines). If most of SWBT's cutover orders request fewer than 10 lines per order, then the two-hour measure established by the TPUC substantially overstates SWBT's performance vis-à-vis Bell Atlantic's.

In any event, SWBT has provided information on its ability to timely complete cutovers for up to 24 lines within one hour, and this data falls short of the 90% threshold for CHC cutovers for both January and February 2000, and it falls just short of that benchmark for FDT cutovers for February 2000. See Conway/Dysart Supp. Aff. ¶ 13. In sum, SWBT has not provided the Commission with the information necessary to assess whether SWBT's timeliness performance meets the threshold deemed "minimally acceptable" in the New York Order (¶ 309), and its performance under the TPUC standard falls far short of the interim standard of 100%. And, if ever reported on the basis of orders, it is possible that SWBT will fall even further short of both thresholds.

Taken as a whole, SWBT's cutover interval performance as measured by PM 114, PM 115, and PM 114.01 does not meet the benchmarks established by the TPUC with any degree of consistency. Particularly given the fact that SWBT's standing vis-à-vis Bell Atlantic's performance in New York cannot be determined with any degree of confidence, the Commission simply cannot conclude based on this data that SWBT has provided CLECs a meaningful opportunity to compete.

II. SWBT FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO SIGNIFICANT OSS FUNCTIONALITIES.

A. The December 1999-February 2000 Data Submitted By SWBT Confirms The SWBT OSS Problems Identified By Sprint In Its Petition.

Section 271(c)(2)(B) requires that a BOC provide nondiscriminatory access to network elements. 47 U.S.C. § 271(c)(2)(B)(ii). The Commission has ruled that this obligation (as well as other checklist requirements such as those covering resale and specific UNEs) includes the requirement that a BOC provide nondiscriminatory access to its OSS. New York Order ¶ 84. Pursuant to this requirement, for OSS functions that are analogous to functions the BOC performs for itself, a BOC must provide access to its OSS that permits competing carriers to perform these functions in "substantially the same time and manner" as the BOC. Id. ¶ 85. For OSS functions that are not analogous to those performed by the BOC for itself, the BOC must offer access that is "sufficient to allow an efficient competitor a meaningful opportunity to compete." Id. ¶ 86.

Sprint demonstrated in its Petition that SWBT falls short of performance that provides CLECs a meaningful opportunity to compete for several important OSS performance measures. See Petition at 15-29. One of the most important performance measures for OSS is the extent to which CLEC orders "flow-through" to the BOC's legacy OSS. The Commission previously has relied upon flow-through problems as indicative of a range of other problems that accompany the inability to flow orders through the BOC's OSS consistently and without manual intervention.[45] Most fundamentally, where CLECs cannot rely on electronic access to submit service orders, the Commission has found that there is a strong likelihood that CLECs cannot obtain access to

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[45] Second Louisiana Order ¶ 107.

ordering systems in as timely a manner as the BOC itself, that consequent reliance on manual handling increases the likelihood that the quality of CLECs' access to ordering systems will be lower than the BOC provides itself, and that both of these factors will become more serious as order volumes increase. See Second Louisiana Order ¶¶ 107-110. Sprint demonstrated in its Petition that SWBT's application raises concern on all these scores. See Petition at 9-15.

In the Petition, Sprint demonstrated that a very large percentage of CLEC orders sent over SWBT's Electronic Data Interchange ("EDI") and LSR Exchange System ("LEX") interfaces are rejected. See Petition at 16. Orders rejected by EDI ranged from 38.2% in July 1999 to 16.9% in September 1999; by October 1999 SWBT's EDI rejects climbed back to 24%. See id. SWBT has not improved this consistently poor performance in the intervening months. EDI rejections reached 25% in December 1999, climbed to 26.3% in January 2000, and fell only slightly to 22.1% in February 2000. See SWBT March 23 Letter, Texas Aggregated Performance Measures at 2. This performance is hardly indicative of "steady improvement" by SWBT (see Supp. Letter at 5); rather, reject rates appear to have reached a plateau in the mid-20s. Reject rates of this magnitude simply will not sustain competition. Moreover, LEX rejections have not fared any better since SWBT's first application; indeed, LEX order rejections continue to be generally consistent with SWBT's poor October performance of 42.8%. See Petition at 16. LEX rejections were 37.2% in December 1999, 40.7% in January 2000 and 40.1% in February 2000. See SWBT March 23 Letter, Texas Aggregated Performance Measures at 2.

SWBT makes three arguments in defense of this poor showing. First, SWBT urges that the data "includes all rejects, including rejects that SWBT can do nothing about - such as a CLEC's request to connect a new customer (not previously served by SWBT) at a street address

that does not exist, or a request for a due date that has already passed at the time the LSR is submitted." Supp. Letter at 5, citing Ham Supp. Aff. ¶ 41-43. However, neither the Supp. Letter nor the Ham Supp. Aff. provide evidence that its high rejection rate is primarily or even substantially the result of CLEC errors. Indeed, an examination of the Ham Supp. Aff. reveals that SWBT's OSS is frequently at fault with regard to invalid address errors, as evidenced by the fact that SWBT plans to implement changes that purportedly will reduce the incidence of these errors. See Ham Supp, Aff. ¶¶ 24-31.[46] Of course, we are left in the dark as to precisely what effect these changes would have on the reject rates reported in the SWBT March 23 Letter. In any event, SWBT has made no showing that invalid address errors are systematically the fault of CLECs; if anything, the fact that SWBT is making changes to its system to reduce address error rejections would seem to suggest the opposite. Moreover, SWBT's reference to LSRs specifying due dates that have already passed as "beyond its control" is ironic at best, considering the fact that these errors are apparently a phenomenon limited to previously rejected LSRs. See Ham Supp. Aff. ¶ 41. Obviously, SWBT can improve its performance here by reducing its rejections for other reasons. In any event, SWBT cannot show that eliminating this error entirely would improve its reject rates so dramatically that its reject rate should be discounted.[47] In the absence

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[46] Reducing address errors would not necessarily significantly reduce the number of LSR rejections because address errors may appear on LSRs that are rejected for other SWBT-caused reasons. Moreover, neither of these address changes will take place (at best) before May 2000, (see id.) and SWBT therefore has not demonstrated that the contemplated changes will produce the results it promises. Unless and until it has done so, the Commission is left to consider the application as filed.

[47] Ms. Ham claims that invalid desired due dates accounted for 4.8% of all rejected EDI LSRs in January. See Ham Supp. Aff. ¶ 41 and Attachment H. However, this would not reduce SWBT's January EDI reject rate from 26.3% to 21.5% because, as conceded by SWBT, the 4.8% figure is based on a count of all LSRs with due date errors, even if a

of evidence based on performance measures demonstrating that the relevant benchmark is met, SWBT bears the burden of demonstrating that its performance nonetheless is nondiscriminatory.[48] This SWBT has failed to do.

Second, SWBT asserts that its reject rates are not cause for concern because it has lower reject rates than those approved in the New York Order. See Supp. Letter at 5-6, citing New York Order ¶¶ 175, 183. However, the FCC did not approve Bell Atlantic's average reject rates in an absolute sense; rather, the Commission determined that because individual carrier reject rates ranged from three percent to 71%, Bell Atlantic's performance actually reflected the particular capabilities of CLECs rather than the efficacy of Bell Atlantic's systems. See New York Order ¶ 183. Here, SWBT has no persuasive evidence to offer on this point. SWBT cites one CLEC ("CLEC G") with a 13.5% EDI reject rate in February 2000 and an average EDI reject rate of 16.7%. See Ham Supp. Aff. ¶ 53 and Attachment Q. However, the average EDI reject rate for all CLECs over the same period was 19.7%, only a three percent difference. See id. CLEC G's EDI reject rate is not sufficiently lower than the average rate to suggest that CLEC capabilities drive reject rates; rather, the relatively small disparity between CLEC G's average EDI reject rate and SWBT's EDI reject rate for all CLECs coupled with the fact that CLEC G's best effort still resulted in a 13.5% reject rate strongly suggests that SWBT's performance is the primary factor driving rejects. Thus, the Commission's reasoning in the New York Order would compel a different conclusion here.

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particular LSR had other errors that would have resulted in a rejection. Thus, it is unclear what effect fixing "due date" errors will have on SWBT's EDI reject rate.

[48] Second Louisiana Order ¶ 116.

Third, SWBT attempts to rely on its performance with regard to flow-through percentage for EDI (PM 13-03) as a reason to not be concerned about its LSR reject rate. See Supp. Letter at 6. SWBT would apparently prefer to ignore its dismal performance with regard to its flow-through percentage for LEX orders (PM 13-02), which continues to be far short of parity for December 1999 through February 2000 and is in no way consistent with providing CLECs a meaningful opportunity to compete. See SWBT March 23 Letter, Texas Aggregated Performance Measures at 2. In any event, SWBT's high reported EDI flow-through rate is no reason to discount SWBT's poor performance on EDI rejects. SWBT's PM 13-03 measurement of EDI flow-through excludes LSRs that are rejected due to what SWBT considers to be CLEC error from the calculation. See Dysart Aff. Attachment A at 34. However, SWBT does not demonstrate that the LSRs so excluded in fact resulted from CLEC error. Therefore, PM 13-03 is in no way instructive as to whether the high reject rate for EDI reported by SWBT results from CLEC or SWBT errors.

Moreover, problems with order rejections do not end with rejection rates. SWBT's record on notifying CLECs of SORD rejections has been and remains quite poor. As pointed out in the Petition, this is a quite substantial shortcoming. See Petition at 20-22. The TPUC has established two performance measures for evaluating SWBT's performance in the electronic return of manual rejects due to editing rejects in SORD. First, PM 10.1 measures the percentage of manual rejects caused by SORD edits on orders received electronically that are returned within five hours of the receipt of the LSR from the CLEC. The TPUC has established a benchmark of 97% for compliance with this category. See Dysart Aff., Attachment A at 30. SWBT has failed to meet this benchmark by a very wide margin for the months December 1999 through February 2000

(69.5%, 82.4%, and 76.9%, respectively), continuing the poor performance identified by Sprint for prior months in its Petition. See Petition at 20.

Second, PM 11.1 measures the mean time to return manual rejects caused by SORD edits for orders received via LEX or EDI from CLECs. The TPUC established a benchmark of five hours for the return of rejection notices. As shown in the Petition, SWBT failed to meet the benchmark from July through November 1999, and it has failed to meet the benchmark in each month from December 1999 through February 2000 (35.7 hours, 28.5 hours, and 7.5 hours, respectively).[49]

Failure to return timely rejection notices is serious "because new entrants cannot correct errors and resubmit orders until they are notified of their rejection."[50] But where the rejection is caused by a problem that cannot be fixed by a CLEC attempting to submit electronic orders (i.e., SORD errors, which are rejected manually, although transmitted electronically (See Petition at 19)), the problem cannot be tolerated in the significant and increasing volumes that exist here.

One further SWBT performance measure bears mention here. Although not discussed in the Supp. Letter, in its Petition Sprint identified SWBT's inability to return manual firm order confirmations ("FOCs") for certain types of unbundled elements in a timely fashion. Again, of concern here is SWBT's inability to provide timely FOCs for unbundled loop orders of one to 50 loops. From December 1999 through February 2000, SWBT returned manual FOCs for such

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[49] While SWBT claims that the results for PM 11.1 for December and January are "artificially inflated," Attachment L makes clear that SWBT would still be in excess of the five hour benchmark even if one controls for the "artificial inflation." See Ham Supp. Aff ¶ 36 and Attachment L.

[50] Application of BellSouth Corp. to Provide In-Region, InterLATA Services in South Carolina, 13 FCC Rcd. 539, ¶ 117 (1997) ("South Carolina Order").

orders on average within 42.9, 24.4 and 32.1 hours, respectively. See SWBT March 23 Letter, Texas Aggregated Performance Measures at 2. SWBT's performance is consistently above the 24 hour return standard that the Commission found was reasonable in New York. See New York Order ¶ 164.

B. SWBT's Demonstration As To OSS Integration Is Insufficient.

In addition, although not the subject of a performance measure, there remains serious doubt as to whether SWBT's pre-ordering and ordering interfaces and functionalities can be fully integrated. Where a BOC provides its own customer representatives with integrated pre-ordering and ordering interfaces and functionalities, as SWBT does, it is beyond dispute that it must provide all of the means necessary to allow a CLEC to perform such integration. See New York Order ¶ 137. In response to SWBT's initial section 271 application, AT&T, among others, explained that such integration was not possible because competitive carriers could only obtain information, such as addresses, from SWBT's pre-ordering databases in unparsed form (i.e., not split up and placed in appropriate fields) rather than in parsed form as is required by SWBT's ordering systems. See AT&T Dalton and DeYoung Aff. ¶ 94. But even if parsed information were available, integration would apparently not be complete since the addresses in the SWBT pre-ordering databases often conflict with those in the ordering databases. See MCI WorldCom McMillon & Savori Decl., ¶¶ 51-52. CLECs apparently often obtain an address from a CSR in the pre-ordering stage and accurately incorporate that information in an LSR in the ordering process, only to have the LSR order rejected by SWBT. See id. ¶¶ 66-67. This occurs because the addresses in the SWBT pre-ordering and ordering databases contain mismatches. It is difficult to see how full integration could be achieved where this continues to be the case.

It does not appear that SWBT has fixed all of these problems since its original filing. As it did in its initial application, SWBT states that CLECs have integrated DataGate with SWBT's EDI interface. See Ham Supp. Aff. ¶ 3.[51] This time, SWBT has submitted letters from Sage and Navigator stating that they have successfully achieved some degree of integration. See Ham Supp Aff., Attachments A & B. While this is encouraging, both Sage and Navigator state in their letters that they continue to experience rejections caused by problems with "address validation" functionalities. See id. It therefore appears that SWBT still has not solved the problem of mismatches in its pre-ordering and ordering databases. The Commission cannot find SWBT to have offered truly integratable pre-ordering and ordering interfaces and functionalities if the information obtained from pre-ordering cannot be used for ordering.

III. SWBT FAILS TO PROVIDE NONDISCRIMINATORY ACCESS TO INTERCONNECTION TRUNKS ON A CONSISTENT BASIS.

As stated in Sprint's original Petition, there is no more basic input for a CLEC than interconnection trunks which allow the CLEC's customers to exchange traffic with the ILEC's customers. See Petition at 62. Yet, SWBT has not demonstrated that it consistently provides nondiscriminatory access to interconnection trunks throughout Texas.

First, SWBT has failed to meet the benchmark for SWBT end office to CLEC end office trunk blockage (PM 70-01) in Houston on a consistent basis. As noted in Sprint's original Petition, SWBT missed the benchmark in July, August, and September. Id. Nevertheless, SWBT

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[51] SWBT also asserts that CLECs have integrated EDI (pre-ordering) and CORBA/EDI (ordering). Ham Supp. Aff. ¶¶ 4, 12. But this representation is not supported by any statements from the CLECs themselves or any other information that would make an independent assessment possible.

claimed that the trunk blockage in Houston was an anomaly and had been fixed;[52] however, SWBT missed the benchmark again in December. The trunk blockage for CLECs was 8.3% while it was only 1.0% for SWBT. See SWBT March 23 Letter, Texas Performance Measures - at 28. While its performance in January and February improved, SWBT has yet to demonstrate consistent passing performance in Houston with this measure.

Second, SWBT has failed to meet parity for missed due dates for installation of trunks for CLECs (PM 73-01) in Houston on a consistent basis. As noted in Sprint's original Petition, SWBT missed more due dates for installation of trunks for CLECs than for itself in Houston during September, October, and November. See Petition at 63. SWBT has failed to meet parity for missed due dates for installation of trunks in Houston in December, for the fourth consecutive month. See SWBT March 23 Letter, Texas Performance Measures - at 28. As a result, SWBT has not demonstrated consistent passing performance in Houston for missed due dates for installation of trunks.

Although SWBT promised to deliver up to 288 trunks per day per CLEC in each major market area,[53] SWBT still cannot support this figure with actual performance. In fact, SWBT failed to meet parity for PM 73-01 in December in Houston for "four ASRs (for four separate CLECs) requesting a total of 835 trunks. These 835 trunks accounted for 6.6% of the total 12,609 trunks provisioned in December."[54] In total, SWBT was to provision 13,444 trunks in

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52 Dysart Aff. ¶¶ 552, 555.

53 See Samson/Madden 12/14/99 Jt. Aff. ¶ 5.

54 See Letter of Austin C. Schlick, representing SWBT, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-4, Att. 4 at 1 (Feb. 18, 2000).

Houston in December -- which calculates to only 434 trunks per day. This number is far below the 288 trunks per day per CLEC that SWBT promised it could deliver for each major market area.

Finally, SWBT has failed to meet the benchmark for trunk installation intervals for two of the last three months. In December and January, the average installation interval for trunks statewide was 22.80 and 25.94 business days, respectively, while the TPUC benchmark is 20 business days.[55] As a result, SWBT has failed to show consistent passing performance with this measure in the last three months.

In sum, SWBT must demonstrate consistent passing performance throughout Texas for the Commission to find that SWBT provides access to trunks on a nondiscriminatory basis. To date, SWBT has failed to do so. Its performance in Houston is insufficient for several measures. Likewise, its statewide installation interval has not met the benchmark in two of the last three months. Consequently, SWBT has failed to show that it provides nondiscriminatory access to trunks.

IV. SWBT'S APPLICATION IS NOT IN THE PUBLIC INTEREST.

The prospect of interLATA entry through the mechanism of section 271 is the incentive Congress gave the BOCs to induce their cooperation in opening their local markets to competitors. Without this incentive, no BOC would rationally relinquish its bottleneck and voluntarily aid in bringing about competition. Accordingly, the FCC has found:

> incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors

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[55] See Letter of Priscilla Hill-Ardoin, representing SBC, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-4, Att. 1 at 1 (March 17, 2000).

> with opportunities to interconnect with and make use of the incumbent LEC's network and services.[56]

When a BOC fails to demonstrate that it has met the section 271 competitive checklist and that its local markets are irreversibly open, it cannot be in the public interest for the Commission to grant the application.[57] Competition would be harmed by a BOC's premature entry into the interLATA market. As recognized by the Commission, "the BOC would have a unique ability to introduce vertical service packages (i.e., long distance and other telecommunications services bundled with local exchange service)." New York Order ¶ 428. Moreover, without adequate competition established at the local exchange level, there would be no market disciplining effect on the BOC to refrain from anticompetitive conduct in its provision of monopoly inputs for the interLATA market.

As described above, SWBT has yet to demonstrate that it has met the Section 271 checklist and that the Texas local markets are irreversibly open to competition. As such, SWBT's entry into the interLATA market at this time is not in the public interest.

Other factors the Commission must consider in its public interest analysis also dictate against grant of the application. First, there is not sufficient local competitive entry in Texas --- most especially for residential local telephone service -- to provide the Commission with any level of confidence that local competition can flourish notwithstanding the problems with SWBT's

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56 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 55 (1996).

57 See Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, 12 FCC Rcd. 20543, ¶ 381 (1997) (where Ameritech had not implemented fully the competitive checklist, the Commission found that it need not reach the further question as to whether the application was in the public interest).

wholesale services. While SWBT purports to update its showing as to the extent of local competition, SWBT apparently employed the same flawed methodology as in its original application to reach its estimate. It is, therefore, subject to the same criticisms expressed in Sprint's Petition and Reply Comments, and Sprint will not reiterate those criticisms here.

Contrary to SWBT's claims, Sprint's decision to initiate local service in certain Texas metropolitan areas on a resale basis is no vote of confidence in SWBT's checklist compliance. See Habeeb Supp. Aff. ¶ 9. Sprint's local telephone service in Texas today is an initial offering that does not place commercial volume pressure on SWBT's ability to provision service. Sprint's entry is, therefore, not indicative of SWBT's checklist compliance, but of Sprint's competitive need to begin offering a local telephone component to its telecommunications services, even in a rudimentary form and even against long odds. Hopefully, insistence upon SWBT's compliance with its section 271 obligations before SWBT is allowed to enter into the long distance business in-region will help shorten these odds.[58]

Second, the increased size of SWBT after its merger with Ameritech (it now controls approximately 30% of the nation's access lines) poses dangers both within the newly enlarged SWBT region as well as throughout the U.S. market for local, long distance, and advanced services. See Petition at 66-69. The Commission has recognized that the incentives of RBOCs to engage in exclusionary conduct increase substantially as the size of their monopoly service areas increase.[59] As a result, interLATA relief prior to the establishment of irreversible local competition will have an even greater adverse effect on competition.

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[58] And, the proposed merger with MCI WorldCom will enable the merged entity to more effectively and efficiently compete in the provision of local service.

[59] SBC/Ameritech Merger Order ¶¶ 188 & 207.

Finally, SWBT has engaged in overt, discriminatory acts towards competitors during the time in which it has the most incentive to cooperate with competitors (i.e., prior to receiving section 271 authority). See Petition at 83-86; AT&T Petition at 88-93. Once section 271 authority is granted, SWBT's economic incentives to refrain from such anticompetitive practices disappear. Some petitioners contend that SWBT will continue to engage in predatory behavior. AT&T Petition at 93-97; MCI/WorldCom Petition at 66-81. In all events, these factors militate against finding SWBT's interLATA entry to be in the public interest until it cures the identified deficiencies. This is what section 271 expressly requires.

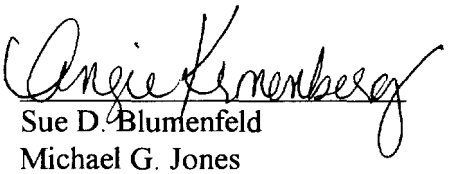
In sum, the Commission must not find the instant application in the public interest until SWBT demonstrates that it has met the 271 checklist and that local competition for residential and businesses is irreversible in Texas.

CONCLUSION

For the foregoing reasons, the Commission must deny SWBT's application.

Respectfully submitted,

Sprint Communications Company L.P.



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Dated: April 26, 2000

CERTIFICATE OF SERVICE

I, Crystal Rogers-Starkey, do hereby certify that on this 26th day of April, 2000, copies of the foregoing Petition to Deny of Sprint Communications Company L.P. on Southwestern Bell Telephone's Section 271 Application, CC Docket No. 00-65 were mailed, first class postage prepaid, unless otherwise indicated, to the following parties:

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